## APPENDIX A

## UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

No. 80—September Term, 1973.

rgued November 5, 1973 Decided January 4, 1974.)

Docket No. 32,879

AMADEO AUGUSTO LUCIANO SANTELISES, JR.,

*Petitioner,*

v.

IMMIGRATION AND NATURALIZATION SERVICE,

*Respondent.*

fore:

WATERMAN, FRIENDLY and TIMBERS,

*Circuit Judges.*

Petition to review order of Board of Immigration peals which dismissed appeal from order of an Immiation Judge who found petitioner deportable pursuant Section 241(a)(5) of the Immigration and Nationality , 8 U.S.C. §1251(a)(5)(1970), because of his conviction der 18 U.S.C. §1546 (1970).

Denied.

MARTIN L. ROTHSTEIN, New York, N.Y. (Austin T. Fragomen, Jr., New York, N.Y., on the brief), *for Petitioner.*

STANLEY H. WALLENSTEIN, Sp. Asst. U.S. Atty., New York, N.Y. (Paul J. Curran, U.S. Atty.,

and Joseph P. Marro, Asst. U.S. Atty., New York, N.Y., on the brief), *for Respondent.*

PER CURIAM:

On this petition to review an order of the Board of Immigration Appeals which dismissed an appeal from an order of an Immigration Judge who found petitioner deportable pursuant to Section 241(a)(5) of the Immigration and Nationality Act, 8 U.S.C. §1251(a)(5) (1970), because of his conviction under 18 U.S.C. §1546 (1970) (causing immigration visas to be accepted by others, knowing they were procured by fraud), petitioner claims that the deportation order violates the prohibition against cruel and unusual punishment and denies him the equal protection of the laws. We deny the petition to review.

Petitioner is a native and citizen of the Dominican Republic. He entered the United States as a permanent resident in 1960. Thereafter he resided here with his wife and child, both American citizens. He worked as a travel agent. In 1965, he was charged in the Southern District of New York with various offenses connected with the preparation and use of false immigration documents. He pled guilty to several counts, including two that charged misuse of visas and other entry documents in violation of 18 U.S.C. §1546 (1970). On January 28, 1966, he was sentenced to concurrent one year terms of probation.

In June 1966, the Immigration and Naturalization Service commenced deportation proceedings against petitioner pursuant to 8 U.S.C. §1251(a)(5) (1970), which authorizes the deportation of any alien who has been convicted of violating 18 U.S.C. §1546. At the deportation hearing in August 1966, petitioner conceded the factual allegations asserted by the INS, including his conviction under §1546; but he argued that deportation would violate his constitu-

rights referred to above. The Immigration Judge
ober 9, 1967 found petitioner deportable because of
viction; found that he was not entitled to any form
retionary relief; and ordered that he be deported
Dominican Republic, the country of his birth and
ality.

tioner appealed to the Board of Immigration Ap-
which entered an order on September 18, 1968 dis-
g the appeal. The instant petition seeks review of
ter order.[1]

reject out of hand petitioner's claim that deportation
tutes cruel and unusual punishment. It is settled that
tation, being a civil procedure, is not punishment
he cruel and unusual punishment clause of the
h Amendment accordingly is not applicable. See, e.g.,
iades v. *Shaughnessy*, 342 U.S. 580, 594-95 & n. 22
) (interpreting the ex post facto clause of Article I,
ting with approval *Fong Yue Ting* v. *United States*,
.S. 698, 730 (1892); *Buckley* v. *Gibney*, 332 F.Supp.
96 (S.D.N.Y.) (Wyatt, J.), *aff'd on opinion below*,
.2d 1305 (2 Cir. 1971), *cert. denied*, 405 U.S. 915
); *Cortez* v. *INS*, 395 F.2d 965, 967-68 (5 Cir. 1968);
v. *INS*, 350 F.2d 87, 90-91 (9 Cir. 1965), *cert. denied*,
.S. 915 (1966); *United States ex rel. Circella* v. *Sahli*,
.2d 33, 40 (7 Cir. 1954), *cert. denied*, 348 U.S. 964
).[2]

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[1] The petition to review was filed in this Court on October 29, 1968. The government filed the administrative record on November 16, 1971. Petitioner's brief was filed on June 13, 1973. In the meanwhile, petitioner moved in the district court to set aside his conviction under §1546. That motion was denied on October 12, 1972. *Santelises* v. *United States*, 72 Civ. 1470 (S.D.N.Y. 1972) (unreported). We affirmed on April 12, 1973. 476 F.2d 787 (2 Cir. 1973).

[2] Petitioner relies upon a statement by Chief Justice Warren, speaking for four Justices, in *Trop* v. *Dulles*, 356 U.S. 86, 98 (1958), that the view that deportation was not a punishment but an implementation of

Nor do we find any merit in petitioner's equal protection claim. Whether it is his claim that he has been singled out for harsher treatment because of his conviction under §1546 than those convicted of crimes involving moral turpitude under Section 241(a)(4) of the Immigration and Nationality Act, 8 U.S.C. §1251(a)(4) (1970), or that as an alien he has been singled out for deportation whereas citizens convicted of the same or other crimes are not deported, his claim is wholly without merit. Deportation is not a remedy available against citizens but rather is an implementation of Congress' power to exclude. And the classification created by Section 241(a)(5) of the Act which is here involved—i.e. deportation of aliens convicted under §1546—surely has a rational basis: maintenance of the integrity of the immigration system by eliminating certain types of immigration frauds. Cf. *Dandridge* v. *Williams*, 397 U.S. 471 (1970); *Faustino* v. *INS*, 432 F.2d 429 (2 Cir. 1970), *cert. denied*, 401 U.S. 921 (1971).

Petition denied.[3]

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the sovereign power to exclude "may be highly fictional." Petitioner's reliance upon this statement is misplaced. It was merely dictum since the case dealt with expatriation rather than deportation.

3 The Board of Immigration Appeals, in its order of September 18, 1968 dismissing petitioner's appeal from the deportation order, included a dictum which petitioner construes as indicating that he would not again become deportable by reason of the same conduct if, following his departure, he were to be lawfully admitted for permanent residence. The Department of State, in a letter dated May 7, 1970 to petitioner's counsel, expressed the opposite view. Petitioner asks us to "affirm" the Board's dictum referred to and to overrule the position of the Department of State. We decline the invitation. Our jurisdiction under Section 106(a) of the Immigration and Nationality Act, 8 U.S.C. §1105(a) (1970), is limited to "judicial review of all final orders of deportation." The Department of State letter is not a part of the administrative record upon which the deportation order below was based, see Section 106(a)(4), 8 U.S.C. §1105a(a)(4) (1970), and of course the letter is not a deportation order. In short, upon the instant petition to review, the issue of petitioner's future admissibility as an alien is not before us.

# APPENDIX B

## U.S. DEPARTMENT OF JUSTICE
## BOARD OF IMMIGRATION APPEALS

September 18, 1968

File: A-11629137 – New York

In re: AMADEO AUGUSTO LUCIANO-SANTELISES

IN DEPORTATION PROCEEDINGS

APPEAL

ORAL ARGUMENT: June 24, 1968
On behalf of respondent:
Edith Lowenstein, Esq.
36 West 44th Street
New York, New York 10036

On behalf of I & N Service:
R.A. Vielhaber, Esq.
Appellate Trial Attorney

CHARGES:
Order: Sec. 241(a)(5), I & N Act (8 USC 1251 (a)(5)) – convicted under 18 USC 1546
Lodged: None

APPLICATION: Remand for additional evidence

The respondent, a married male alien, a citizen of the Dominican Republic, appeals from an order entered by the special inquiry officer on October 9, 1967 directing the

respondent's deportation on the charge stated in the Order to Show Cause and denying his application for relief under Section 243(h) of the Immigration and Nationality Act. Counsel on appeal seeks a remand of the case for additional evidence that the alien will be subjected to persecution by reason of his race, religion or political opinion if he returns to the Dominican Republic.

The respondent last entered the United States for permanent residence on February 6, 1960. He was convicted on December 7, 1965 in the United States District Court, Southern District of New York for violation of Section 1546 of Title 18 of the United States Code. Section 241(a)(5) of the Immigration and Nationality Act requires the deportation of any alien in the United States who, "has been convicted under Section 1546 of Title 18 of the United States Code." The respondent is deportable as charged in the Order to Show Cause.

During the course of the hearing counsel then of record attacked the constitutionality of the statute under which the respondent has been found deportable. This Board does not adjudicate matters concerned with the constitutionality of the immigration laws (*Matter of L-*, 4 I & N Dec. 556).

The respondent has applied for a temporary withholding of his deportation pursuant to Section 243(h) alleging that he was politically active in opposing the Trujillo government in 1958. He also alleges that since his entry into the United States he has been active in the Dominican Revolutionary Party which seeks an overthrow of the present government in the Dominican Republic. There is evidence of record, however, that the respondent has returned to the Dominican Republic on several occasions since his entry for permanent residence and has not been molested. We affirm the denial of the respondent's application for relief under Section 243(h) of the Immigration

nd Nationality Act.

We have carefully reviewed the brief submitted by counsel nd have fully considered her argument before this Board on une 24, 1968. We find no basis nor has any evidence been ubmitted which warrants a remand of the case for an dditional hearing on the issue of relief under Section 243(h) of he Act.

Counsel raises the question as to whether the respondent ould be excludable if he is permitted to return to the United tates following his deportation. We held in *Matter of R-G-*, 8 I N Dec. 128 (BIA, September 2, 1958), that an alien eportable under Section 241(a)(5) of the Act (whether for ilure to comply with registration provisions of Section 265 or ecause of conviction under 18 USC 1546) such alien would ot again become deportable by reason of the same conduct hen, following departure, he has been lawfully admitted for ermanent residence. The respondent, however, would require a ant of permission to reapply for admission pursuant to ection 212(a)(17) of the Act.

An appropriate order will be entered dismissing the appeal.

ORDER: It is directed that the appeal be and the same is reby dismissed.

Acting Chairman